



FST File No. # P0275-2006

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 ("the Act");

AND IN THE MATTER OF the Participating Co-operatives of Ontario Trusteed Revised Pension Plan, Registration Number 0345736 (the "Plan").

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

**NOTICE OF HEARING REGARDING PROPOSED SETTLEMENT OF
FINANCIAL SERVICES TRIBUNAL PROCEEDING**

TO: ACTIVE MEMBERS, DEFERRED VESTED MEMBERS, RETIRED MEMBERS AND OTHER BENEFICIARIES ENTITLED TO PAYMENTS, CURRENT OR DEFERRED, UNDER THE PLAN ON THE PLAN'S WIND-UP DATE, NAMELY MARCH 31, 2003

AND TO: GLENCOE COUNTRY DEPOT, HAMILTON COUNTRY DEPOT, KINGSTON COUNTRY DEPOT, THE PELEE ISLAND CO-OPERATIVE ASSOCIATION, AGRI-WEST CORPORATION, L'AMIE SOCIETE CO-OPERATIVE DE CONSOMMATION, POWASSAN CO-OPERATIVE INC. AND THE TRUSTEE IN BANKRUPTCY OF WARKWORTH CO-OPERATIVE SERVICES

THIS NOTICE AND THE UPCOMING HEARING MAY AFFECT YOUR RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

This notice describes a proceeding before the Financial Services Tribunal ("Tribunal") under section 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA") concerning the Plan, a proposed settlement and the details of the hearing before the Tribunal on March 31, 2008 to consider a request by the settling parties that the proposed settlement be included in an Order of the Tribunal.

Background

In February 2003, the Board of Trustees of the Plan (the "Board of Trustees") concluded that the Plan was no longer financially viable and adopted amendments proposing to decrease certain Plan Members' benefits and terminate the Plan effective March 31, 2003 (the "Proposed Amendments").

In April 2006, the Superintendent of Financial Services issued a Notice of Proposal to the Board of Trustees and nineteen employers who participated in the Plan (the "Employers"). In the Notice of Proposal, the Superintendent of Financial Services, among other things, proposed to make the following orders:

- to refuse to register the Proposed Amendments;
- to order the Board of Trustees to refrain from administering the Plan in accordance with the Proposed Amendments;
- to order the Employers to make payments into the Plan to eliminate the Plan's funding shortfall;
- to refuse to approve the 2003 Wind Up Report filed by the Board of Trustees; and
- to require the Board of Trustees to prepare and file a new wind up report.

The Notice of Proposal was later amended to include four other participating Employers.

In response to the Notice of Proposal, the Board of Trustees and certain Employers requested a hearing before the Tribunal. In addition, some current and former members of the Plan sought party status before the Tribunal.

In December 2006, the parties to the proceeding began mediating the issues with the assistance of Mediator Leslie Macleod, appointed by the Ontario Ministry of Finance. The parties to that mediation are: Gay Lea Foods Co-operative Limited, Orford Co-operative Ltd., Lucknow District Co-operative Inc., Madoc Co-operative Association, Huron Bay Co-operative Inc., Sunderland Co-operative Inc., North Wellington Co-operative Services Inc., Green Lea Ag Center Inc., Ontario Federation of Agriculture, Inland Co-operative Inc., Simcoe District Co-operative Services, Waterloo-Oxford Co-Operative Inc., Manitoulin Livestock Co-Operative, Cochrane Farmers Co-operative and Co-opérative Régionale de Nipissing-Sudbury Limited (collectively, the "Settling Employers"), the Board of Trustees, the Superintendent of Financial Services and a committee of Plan Members comprised of Don Huff, Bruce Chambers, Don Kabbes, Reg Cressman, Jon Lazarus and Tom Perkes (the "Plan Member Committee") (collectively, the "Mediating Parties").

This mediation took place in conjunction with separate efforts to mediate a resolution to a related proceeding under the *Class Proceedings Act, 1992*, Court File No. 03-CV-244195CP (the "Class Proceeding"). The details of the tentative settlement reached in the Class Proceeding, which is subject to a separate approval process, are provided in a separate notice.

In January 2008, the Mediating Parties negotiated a proposed settlement, which is subject to being incorporated in an Order of the Tribunal (the "Proposed Settlement"), and which is summarized below:

1. Each of the Settling Employers will pay an amount into the Plan based on the Plan liabilities relating to its current and former employees who are members or former

members of the Plan. Accordingly, the Settling Employers will collectively pay approximately \$14,500,000 into the Plan.

2. Any amounts paid by Settling Employers to or on behalf of their employees or former employees since the wind-up date to compensate employees in respect of the Plan's funding deficit will be deducted from the amounts they are required to pay in clause 1 above. Similarly, Plan members and former members who have received such "top up" payments will not receive double recovery for those amounts.
3. The tentative settlement of the Class Proceeding must also be approved by the Superior Court of Justice, and the net proceeds of the tentative settlement, if approved, must be paid into the Plan. The Class Proceeding notice contains details regarding the tentative settlement amount in that proceeding.
4. The Province of Ontario will pay \$20,000,000 into the Plan, subject to specified conditions, including that the proceedings under the *Class Proceedings Act, 1992* and the *Pensions Benefits Act* are settled, the tentative Class Proceeding settlement approved by the Superior Court of Justice, the Proposed Settlement incorporated into an Order of the Financial Services Tribunal, and both settlements provide for the release of the Province from any claims or losses in connection with the Plan.
5. All payments by Settling Employers will be made within 35 days of the issuance of a final Order of the Tribunal incorporating the terms of the Proposed Settlement and final Court approval of the Class Proceeding settlement, estimated to be on or before June 1, 2008.
6. The Superintendent of Financial Services shall take all actions necessary to secure additional funding from the non-Settling Employers (i.e. those Employers who participated in the Plan as at March 31, 2003 and who do not participate in the Proposed Settlement or who do not pay amounts into the Plan within the timeframes in the Proposed Settlement).
7. Non-Settling Employers will remain fully liable in accordance with the Notice of Proposal, as amended. In addition, some members employed or formerly employed by non-Settling Employers that do not contribute adequate amounts to the Plan may in certain circumstances receive lower benefits than other members.
8. The Proposed Settlement is contingent on the Tribunal granting an Order incorporating the terms of the Proposed Settlement.
9. Thirty-five days after the later of the Tribunal's Order or Court approval of the settlement of the Class Proceeding, the Board of Trustees will resign as administrator of the Plan

and the Superintendent of Financial Services will appoint the firm of Morneau Sobeco to administer the wind-up of the Plan.

10. The Board of Trustees have filed a claim on behalf of the Plan with the Trustee in Bankruptcy of the Warkworth District Co-Op.

The Mediating Parties and their lawyers believe that the Proposed Settlement is a fair settlement that will improve Plan members' position and avoid the Tribunal hearing process with uncertain results. The Superintendent of Financial Services has recently appointed Morneau Sobeco to conduct an examination of the Plan and Morneau Sobeco has found that the funded ratio of the Plan is currently below 50% and the funded position continues to decline. It is anticipated based on certain assumptions agreed to by the Mediating Parties (i.e. that there be no hold back for a contingency reserve and an assumption respecting the number of members who will elect annuity purchases) that the above referenced settlement amounts, would, on an estimated basis, result in the Plan achieving a funded ratio of approximately 71.5%, and benefits as of March 31, 2003 will be adjusted accordingly. The final funded ratio will be determined by Morneau Sobeco based on actual experience and could be greater or less than 71.5%. The final wind-up of the Plan by Morneau Sobeco will likely not be completed until sometime in 2009, but, in the meantime, benefits in pay may be adjusted retroactively based on an estimated funded ratio in 2008.

The Tribunal Process

The parties will appear before the Tribunal at North York Memorial Community Hall, 5110 Yonge Street, Burgundy Room, Toronto, Ontario on March 31, 2008 at 9:30 a.m. to request that the Tribunal include the Proposed Settlement in an Order in the place of the Order proposed in the Notice of Proposal. This hearing is open to the public, unless the Tribunal otherwise directs.

If you agree with the Proposed Settlement, you are not required to take any further action, except as described in the following paragraph. If the Proposed Settlement is incorporated in an Order granted by the Tribunal, the settlement amounts will be paid into the Plan and be used to support benefit payments. Accordingly, you will share in the Proposed Settlement, if you are a Plan member or former member entitled to payments from the Plan as at March 31, 2003 and to the extent that you have not already been compensated by your current or former employer, subject to the terms of the Proposed Settlement.

If you were entitled to payments, current or deferred, under the Plan on the Plan's wind-up date, namely March 31, 2003 and your existence and current address are known to the Plan administrator, you will receive a copy of this Notice by mail shortly after February 8, 2008. If you do not receive this notice by mail by February 22, 2008, you must write to:

Participating Co-Operatives Class Action
Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Tel: 1-866-474-1740; Fax: (416) 204-2897; Email: cooperativespension@kmlaw.ca

and ensure that your letter is received by Koskie Minsky LLP by no later than March 24, 2008. If you fail to do so, you will not receive important letters by mail, you will not share in the Proposed Settlement and you will not be able to pursue your rights in these matters in the future.

Plan Members who wish to participate in the hearing before the Tribunal, must first apply to the Tribunal for party status. Applications for party status may be made at any time before March 7, 2008. If you do not apply before this deadline, your application will only be considered with the consent of the Tribunal. The grant of party status to any applicant for party status is in the discretion of the Tribunal. To apply for party status you should contact the Registrar. The name, address, telephone and fax number of the Registrar is as follows:

Rhonda Booth, Registrar
Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, ON M2N 6L9
Telephone: (416) 590-7294 or 1-800-668-0128 x 7294
Fax: (416) 226-7750

Any applications for party status will be dealt with at the continuation of the Pre-Hearing Conference on March 17, 2008 at 9:30 a.m. at Financial Services Tribunal, 5160 Yonge Street, 14th Floor, Room 20, Toronto, Ontario. You or your representative should be present at the Pre-Hearing Conference for your application for party status to be considered.

If you do not participate in the hearing in accordance with this Notice, the Tribunal may proceed without your participation and you will not receive any further notice in this proceeding.

If you require additional information concerning the Proposed Settlement, please contact the Financial Services Commission of Ontario at the following dedicated telephone line or email address for this matter (416-590-7082 or PensionInquiries@fscsco.gov.on.ca), or Koskie Minsky LLP, counsel for the Plan Members Committee, at the address indicated above.

Questions regarding the content of the Proposed Settlement should not be directed to the Registrar of the Tribunal.

DATED at the City of Toronto, this Tuesday, February 12, 2008.

Rhonda Booth
Registrar
Financial Services Tribunal

Cet avis est aussi disponible, sur demande, en français.